

§ 536.101

5376 as of the effective date of these regulations.

(b) The rate of basic pay for any individual converting to a pay system under 5 U.S.C. 5376 shall be at least equal to the rate payable to that individual immediately before such conversion, including any interim geographic adjustment authorized by Schedule 9 of Executive Order 12736 of December 12, 1990.

(c) If there is an increase in an individual's rate of basic pay upon conversion, other than to the minimum rate under 5 U.S.C. 5376, the increase must be approved by the head of the agency or his or her designee.

PART 536—GRADE AND PAY RETENTION

Subpart A—Definitions, Coverage and Applicability

Sec.

536.101 General.

536.102 Definitions.

536.103 Coverage and applicability of grade retention.

536.104 Coverage and applicability of pay retention.

536.105 Exclusions.

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

536.201 Comparison of grades in different pay schedules or pay systems.

536.202 Period of grade retention.

536.203 Determination of retained grade.

536.204 Determination of applicable rate schedule.

536.205 Determination of rate of basic pay.

536.206 Criteria for a "reasonable offer."

536.207 Loss of eligibility for grade retention.

536.208 Termination of grade retention.

536.209 Loss of eligibility for, or termination of, pay retention.

Subpart C—Miscellaneous Provisions

536.301 Placement and classification plans.

536.302 Appeal of termination of benefits because of reasonable offer.

536.303 Documentation.

536.304 Issuance of employee letters.

536.305–536.306 [Reserved]

536.307 Availability of information.

536.308 Applicability of retained grade.

AUTHORITY: 5 U.S.C. 5361–5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of

5 CFR Ch. I (1–1–97 Edition)

1990 (Pub. L. 101–508), 104 Stat. 1338–336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981;

§ 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

SOURCE: 45 FR 85656, Dec. 30, 1980, unless otherwise noted.

Subpart A—Definitions; Coverage and Applicability

§ 536.101 General.

(a) Title VIII of Public Law 95–454 (The Civil Service Reform Act of 1978) provides that an employee who is placed in a lower grade as a result of reduction-in-force procedures, or whose position is reduced in grade as a result of reclassification of the position, is entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting an employee indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of grade and pay retention. This part supplements and implements the provisions of 5 U.S.C. 5361–5366, and section 801(b) of Public Law 95–454, and must be read together with those sections of law.

§ 536.102 Definitions.

For the purposes of this part:

Demotion at an employee's request means a reduction in grade:

(1) Which is initiated by the employee for his or her benefit, convenience or personal advantage, including consent to a demotion in lieu of one for personal cause, and

(2) Which is not caused or influenced by a management action.

Demotion for personal cause means a reduction in grade based on the conduct, character, or unacceptable performance of an employee.

Employee means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.

Employment on a temporary or term basis means employment under an appointment having a definite time limitation or designated as temporary or term.

Rate of basic pay means, for any pay system, the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay or any kind such as night or environmental differentials in the case of a prevailing rate employee.

Rate schedule means a specific set of rates within a pay schedule.

Reorganization means the planned elimination, addition or redistribution of functions or duties either wholly within an agency or between agencies.

Representative rate means:

(1) The fourth step of the grade in the case of a position under the General Schedule or the individual's rate under the Senior Executive Service or a position subject to the senior-level pay authority under 5 U.S.C. 5376;

(2) The second rate of the grade of a position under a regular prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, or in the case of a position with a single rate, the single rate of that position; or

(3) The rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule in the case of a position under a schedule different from those covered in paragraph (1) or (2) of this definition.

Temporary promotion means a promotion with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent

position at the expiration of that promotion.

Temporary reassignment means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that reassignment.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 11795, Mar. 25, 1985; 50 FR 35494, Aug. 30, 1985; 56 FR 18662, Apr. 23, 1991; 58 FR 65537, Dec. 15, 1993]

§ 536.103 Coverage and applicability of grade retention.

(a) Grade retention shall apply to an employee who moves to a position in a covered pay schedule which is lower graded than the position held immediately prior to the demotion in the following circumstances:

(1) As a result of reduction-in-force procedures; or

(2) As a result of a reclassification process.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may offer grade retention to eligible employees who are or might be reduced in grade as the result of a reorganization or reclassification decision announced by management in writing. When an employee is offered a position with grade retention in anticipation of a reduction in grade, the agency shall inform the employee in writing that acceptance of the position is not required and that declination of the offer has no effect on the employee's entitlement to grade retention under paragraph (a) of this section if he or she is actually moved to a lower graded position.

(c)(1) An employee who, immediately before being placed in a lower graded position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in a position(s) under a covered pay schedule at a grade(s) higher than the position in which the employee is placed, including service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined